

**LETTER OPINION**  
**95-L-8**

January 25, 1995

Mr. Gerald A. Kuhn  
Logan County State's Attorney  
P.O. Drawer 50  
Napoleon, ND 58561-0050

Dear Mr. Kuhn:

Thank you for your letter inquiring when taxes and special assessments become delinquent for purposes of the register of deeds' refusing to record an instrument under N.D.C.C. ? 11-18-02.

N.D.C.C. ? 11-18-02 provides as follows:

Except as otherwise provided in section 11-18-03, the register of deeds shall refuse to receive or record any deed, contract for deed, plat, replat, patent, auditor's lot, or any other instrument that changes the current property description unless there is entered thereon a certificate of the county auditor showing that a transfer of the lands described therein has been entered and that the delinquent and current taxes and delinquent and current special assessments against the land described in such instrument have been paid, or if the land has been sold for taxes, that the delinquent taxes and special assessments have been paid by sale of the land, or that the instrument is entitled to record without regard to taxes.

(Emphasis supplied.)

Therefore, unless the instrument is entitled to be recorded without the auditor's certificate under N.D.C.C. 11-18-03, the register of deeds must refuse to receive or record any instrument unless it contains a certificate by the county auditor showing that both the delinquent and current taxes and special assessments have been paid or that the instrument is entitled to be recorded without regard to taxes. The requirement that current as well as delinquent taxes and

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special assessments be paid was added in 1993. 1993 N.D. Sess. Laws ch. 100, § 2.

The register of deeds' refusal of an instrument pursuant to N.D.C.C. § 11-18-02 is based on the county auditor's certificate entered upon the instrument. N.D.C.C. § 11-13-12 governs the preparation by the county auditor of the certificate to be entered on the instrument. Subsection 1 requires a certificate regarding delinquent taxes.

N.D.C.C. § 57-20-01 specifies when taxes become delinquent.

All real and personal property taxes and yearly installments of special assessment taxes become due on the first day of January following the year for which the taxes were levied. The first installment of real estate taxes, all personal property taxes, and yearly installments of special assessment taxes become delinquent after the first day of March following . . . .

N.D.C.C. § 57-20-01. Therefore, any taxes or yearly installments of special assessments not paid by March 1 of the year following when the taxes or yearly installments became due must be certified by the county auditor as delinquent pursuant to N.D.C.C. § 11-13-12(1).

N.D.C.C. § 11-13-12(2) requires the auditor to place a statement on the instrument showing the amount of any current taxes and current special assessments. The terms "current special assessments" and "current taxes" are defined in subsection 2(a) and (b) respectively of N.D.C.C. § 11-13-12 for purposes of determining whether current taxes are unpaid.

N.D.C.C. § 11-13-12(2)(a) states that current special assessments are those special assessments which have been certified to the county auditor but which are not yet delinquent. N.D.C.C. § 40-24-12 sets November 1 of each year as the date by which the city auditor must certify the special assessments to the county auditor. Therefore, it is my opinion that any special assessments which have been certified to the county auditor by the previous November 1 must be

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considered in determining whether any current special assessments have not been paid for purposes of preparing the statement required by N.D.C.C. ? 11-13-12(2).

N.D.C.C. ? 11-13-12(2)(b) states that current taxes are those real estate taxes which are shown on the most recent tax list prepared by the county auditor. N.D.C.C. ? 57-20-06 requires the county auditor to deliver the tax list to the county treasurer by December 10 of each year. Therefore, it is my opinion that the real estate taxes which appear on the last December 10 tax list prepared by the county auditor are the taxes which the county auditor must consider in determining whether any current real estate taxes have not been paid for purposes of the statement required by N.D.C.C. ? 11-13-12(2).

When the county auditor receives a receipt of the county treasurer showing all current and delinquent taxes and special assessments have been paid, the auditor enters on the instrument that the taxes are paid and the transfer entered. N.D.C.C. ? 11-13-12. It is only when the auditor's certificate has been entered on the instrument stating the taxes are paid, or the land has been sold for taxes, or the instrument is entitled to be recorded without regard to taxes and the certificate states the transfer has been entered that the register of deeds is authorized to receive or record the instrument. N.D.C.C. ? 11-18-02.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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